

STANDARD CRIMINAL 19

DEFENDANT WITNESS (PRIOR CONVICTION)

You have heard evidence that defendant has previously been convicted of a criminal offense. You may consider that evidence only as it may affect defendant's believability as a witness. You must not consider a prior conviction as evidence of guilt of the crime for which the defendant is now on trial.

SOURCE: RAJI (Criminal) No. 19 (1996); ARIZ. R. EVID. 609; *State v. Green*, 200 Ariz. 496, 499, 29 P.3d 271, 274 (2001).

USE NOTE: This instruction must be given if the court allows evidence of defendant's prior conviction. "Whenever evidence is admitted of other offenses there is an imperative duty on the trial court to clearly instruct the jury as to the restricted and limited purpose for which such evidence is to be considered." *State v. Canedo*, 125 Ariz. 197, 200, 608 P.2d 774, 777 (1980). The court's failure to provide this type of instruction constitutes reversible error. *Id.*

COMMENT: The above instruction is appropriate when the trial court admits the evidence of the prior conviction only for impeachment under Ariz. R. Evid. 609. If relevant, the trial court may also admit the evidence of the prior conviction under Rule 404(b), ARIZ. R. EVID.; *State v. Smith*, 146 Ariz. 491, 499, 707 P.2d 289, 297 (1985); *State v. Burciaga*, 146 Ariz. 333, 335, 705 P.2d 1384, 1386 (App. 1985).

If the trial court admits the evidence under both Rule 404(b) and Rule 609, the trial court should delete the word "only" in the second sentence. Also, the trial court should consider combining this instruction with Standard Criminal 26A or 26B, dealing with evidence of other crimes, wrongs, or acts. The Court should also consider whether the specific reference to the nature of the prior offense(s) should or should not be sanitized to prevent prejudice. See *State v. Smyers*, ___ Ariz. ___, 86 P.3d 370, 374 (2004); *State v. Montano*, 204 Ariz. 413, 426, 65 P.3d 61, 74 (2003).